In the

Supreme Court of the United States

OCTOBER TERM, 1964

No. 496

ESTELLE T. GRISWOLD
AND
C. LEE BUXTON,
Appellants,
vs.
STATE OF CONNECTICUT,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF ERRORS OF CONNECTICUT

REPLY TO MOTION TO DISMISS

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This response to appellee's Motion to Dismiss is directed only to that part of the Motion under the heading, Questions Presented by the Appellants in their Jurisdictional Statement. (pp. 3-6)

I.

In sub-head 1(a) (p. 3), appellee declares that the issue whether Connecticut Statutes 53-32 and 54-196 deprived appellant Griswold of her liberty and property without due process of law, although claimed in her demurrer and in her assignment of errors, was not argued in her brief before the Supreme Court of Errors and, under Connecticut law, was regarded as abandoned. This statement is erroneous. The fact is that the issue was briefed. (Appellants' Brief, p. 35). The same factual error is present in sub-head 2 (p. 4) and sub-head 4 (p. 5) of appellee's Motion to Dismiss. Both issues were covered in appellants' brief to the Supreme Court of Errors. (Brief, pp. 14, 15 ff. and p. 18).[1]

II.

In sub-head 1 (b) (pp. 3-4), the argument is made that appellants did not claim that Connecticut Statutes 53-32 and 54-196 were repugnant to the Constitution of the United States. Appellee claims that appellants' contention was merely that the statutes in question, as they would be applied to them, was a denial of their rights under the Constitution of the United States and that "their federal rights prevented the application of these state statutes to them." The same argument is made in sub-head 3 (p. 5).

Any fair interpretation of appellants' demurrer, assignment of errors and argument clearly means that the constitutionality of the Connecticut Statutes was challenged as depriving appellants of liberty and property under the Fourth, Ninth and Fourteenth Amendments and of freedom of speech under the

[1] Appellants' brief below is available in "Connecticut Supreme Court Records and Briefs," Nov. Term 1963, 560 ff. with original pagination, cited above.

First and Fourteenth Amendments The Connecticut Statutes were claimed to be unconstitutional under these amendments as applied to appellants.

III.

The complete and convincing answer to appellee's arguments, above, is to be found in the opinions of the two Connecticut Appellate Courts, both of which treated all the issues set forth in appellants' Jurisdictional Statement as before them and as adjudicated by them. Thus the opinion of the Appellant Division of the Circuit Court declared, "in each case a demurrer was filed on the ground that the quoted sections of the General Statutes were unconstitutional as here applied because (1) they denied the defendants their rights to liberty and property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States and (2) they denied them their rights to freedom of speech and communication of ideas under the First and Fourteenth Amendments to the Constitution of the United States and §§ 5 and 6 of Article First of the Constitution of Connecticut. Both demurrers were overruled and error is assigned in the ruling of the court."[6] (Appellants' Jurisdictional Statement, p. 29.)

So too, the brief opinion of the Supreme Court of Errors interpreted the issues as involving the validity of the Connecticut Statutes under the federal constitution. After referring to the decision of the Appellant Division, it went on to state that that court had certified certain substantial questions of law to be reviewed. "These questions together with others certified by us are now before us on this appeal." (Jurisdictional Statement, p. 22.)[7] The opinion then referred to *State* vs. *Nelson*, 126 Conn. 412, 11 A.2d 856; *Tileston* vs. *Ullman*, 129 Conn. 84, 26 A.2d 582; *Buxton* vs. *Ullman*, 147 Conn. 48, 156 A.2d

508; *Trubek* vs. *Ullman*, 147 Conn. 633, 165 A.2d 158. It then went on: "An examination of these cases discloses that every attack now made on the statute, standing by itself or when considered in combination with § 54-196, has been made and rejected in one or more of these cases, the last two having been decided within the past five years".

It could not possibly be maintained that the above cited cases did not decide issues of constitutional validity. Following them, the Supreme Court of Errors in these cases declared that "the legislature is primarily the judge of the regulations required to that end [to conserve the public safety and welfare, including health and morals] and its police statutes may be declared unconstitutional only when they are arbitrary or unreasonable attempts to exercise its authority in the public interest. The court again cited the *Nelson* and *Buxton* cases and authorities therein. (Jurisdictional Statement, p. 23.)

Respectfully submitted,

FOWLER V. HARPER,
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New Haven, Connecticut,
Attorney for Appellants.

APPENDIX

THE SUPREME COURT OF ERRORS
OF THE
STATE OF CONNECTICUT

STATE OF CONNECTICUT *vs.* ESTELLE T. GRISWOLD AND C. LEE BUXTON	Circuit Court of Connecticut, Appellate Division File Numbers CR 6-5653 AP CR 6-5654 AP

PETITION FOR CERTIFICATION BY SUPREME COURT OF ERRORS

Appellate Panel:

KOSICKI, J.
PRUYN, J.
DEARINGTON, J.

To the HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF ERRORS:

. . . 4. In failing to find that the application of Sections 53-32 and 54-196 of the General Statutes to the actions of these defendants violated their rights to freedom of speech and to life, liberty and property without due process of law, in violation of the provisions of the Constitutions of the United States and the State of Connecticut?

[Record, Supreme Court of Errors, pp. 42, 44]

Nos. CR6-5653 AP
CR6-5654 AP
STATE OF CONNECTICUT
vs.
ESTELLE T GRISWOLD
AND C. LEE BUXTON

Supreme Court of Errors,
February 19, 1963

ORDER GRANTING CERTIFICATION

The defendants have filed a petition for certification and the court having considered said petition finds that it should be granted.

Whereupon it is ordered that said petition be and it hereby is granted.

By the Court,
RAYMOND G. CALNEN, *Clerk*
[*Ibid* pp. 49, 50]